IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 7.6.2007

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(NPD) No.885, 974 and 975 of 2003

C.R.P.NPD.No.885/2003
M/s.C.B.Muthusamy Chettiar
and Company
rep., by is Prop.:
C.M.Ramaraj
No.89 Govindappa Naicken St.,
Chennai 600 079.

.. Petitioner/Respondent/Tenant

vs.

A.Sundar Raj .. Respondent/Petitioner/Land Lord

CRP.NPD.Nos.974 and 975 of 2003:
A.Sundar Raj .. Petitioner/Appellant/Petitioner
Petitioner/Respondent/Petitioner

vs.

M/s.C.B.Muthusamy Chettiar
and Sons, rep.,by is Prop.:
Ramaraj
No.187, Govindappa Naicken St.,
Chennai 600 001.

.. Respondent/Respondent/Respondent
Respondent/Appellant/Respondent

Revision Petition No.885/2003 filed against the order dated 25.11.2002, passed in R.C.A.No.374/1997, on the file of VII Small Causes Court, Chennai in modifying the orer dated 31.1.1997 passed in RCOP No.1566/1994, on the file of the XVI Small Causes Court, Chennai, Revision Petition No.974/2003 filed against the order dated 25.11.2002, passed in R.C.A.No.270/1997, on the file of VII Small Causes Court, Chennai against the order dated 31.1.1997 passed in RCOP No.1566/1994, on the file of the XVI Small Causes Court, Chennai and Revision Petition No.975/2003 filed against the order dated 25.11.2002, passed in R.C.A.No.374/1997, on the file of VII Small Causes Court, Chennai against the order dated 31.1.1997 passed in RCOP No.1566/1994, on the file of the XVI Small Causes Court, Chennai.

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For Petitioner : Mr.S.Parthasarathi,
Senior counsel, for
M/s.A.Ramesh Kumar.

For Respondent : Mr.A.Thyagarajan

COMMON ORDER

Civil Revision Petition No.885/2003 has been filed against the order dated 25.11.2002, passed in R.C.A.No.374/1997, on the file of VII Small Causes Court, Chennai in modifying the order dated 31.1.1997 passed in RCOP No.1566/1994, on the file of the XVI Small Causes Court, Chennai,

2.Civil Revision Petition No.974/2003 has been filed against the order dated 25.11.2002, passed in R.C.A.No.270/1997, on the file of VII Small Causes Court, Chennai againt the order dated 31.1.1997 passed in RCOP No.1566/1994, on the file of the XVI Small Causes Court, Chennai.

3. Civil Revision Petition No.975/2003 has been filed against the order dated 25.11.2002, passed in R.C.A.No.374/1997, on the file of VII Small Causes Court, Chennai against the order dated 31.1.1997 passed in RCOP No.1566/1994, on the file of the XVI Small Causes Court, Chennai.

4.RCOP No.1566/1994 was filed by the landlord under Sec.4 of the Tamil Nadu Buildings (Lease and Rent control) Act, 1960, hereinafter called 'the Act', for fixing the fair rent for the tenanted premises at Rs.49,162/- per ;month. The premises let out is the entire ground floor except one shop abutting the street and entire first floor except one room in premises No.89, Govindappa Naicken Street, Chennai.1. This RCOP was resisted by the tenant by stating that at the most the fair rent could not be more than Rs.7,500/- per month. The rent controller by order dated 31.1.1997 fixed the fair rent Rs.35,065/- per month and aggrieved by the same the tenant filed RCA No.374/1997. The landlord was also aggrieved by the order of the rent controller and therefore he also filed RCA No.270/1997. The rent control appellate authority by a common order dated 25.11.2002 disposed of both the appeals by fixing the fair rent at Rs.33,859/- instead of Rs.35,065/- as fixed by the rent controller. Aggrieved by the order made in RCA No.374/1997 fixing the fair rent at Rs.33,859/- instead of Rs.7,500/- per month, the tenant has filed CRP.NPD.No.885/2003. Similarly the landlord aggrieved by the order of the appellate authority in reducing the fair rent to Rs.33,859/-, filed CRP.NPD.No.974/2003. The landlord has also filed another CRP.NPD.No.975/2003 as the fair rent was not fixed at Rs.49,162/- per month as demanded by him.

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5.The case of the landlord in RCOP No.1566/1994 is that the rent paid by the tenant at R.4,750/- per month is very low and as the property is situated in a highly commercial area, the fair rent is to be fixed at Rs.49,162/- per month. This was resisted by the tenant by contending that the property is 45 to 50 years old and the fair rent could not be fixed at more than Rs.7,500/- per month.

6.The rent controller after going through the evidence let in by the parties found that the building is a class I category and it is 80 years old. The rent controller has also accepted that the construction area in the ground floor is 3460 sq.ft., and 1,580 sq.ft., in the first floor with Madras flooring and 216 sq.ft., in the 1st floor with Mangalore tiles. The rent controller fixed the construction cost by taking note of the rates fixed by PWD for the year 1994-1995. The rent controller fixed the value of the land at Rs.22,89,600/- per ground on the basis of Ex.C.1 which is the copy of the guidelines value. On that basis, the rent controller fixed the fair rent at Rs.35,065/- per month.

7.The appellate authority after re-appreciating the evidence concurred with the findings of the rent controller except with regard to the value of the land at Rs.22,00,000/- based on Ex.A9 which is a sale deed executed in the year 1997 in respect of a property situated within ½ km from the tenanted premises. Only on that basis the appellate authority reduced the fair rent fixed by the rent controller from Rs.35,065/- to Rs.33,859/- per month. Thus both the authorities have concurrently found that the fair rent would exceed more than Rs.30,000/- per month and the only contention is the value fixed by the rent controller was the cost of the land. The rent controller fixed the value of the land at Rs.22,89,600/- per ground on the basis of the guideline value, whereas the appellate authority fixed the value of the land at Rs.22,00,000/- per ground on the basis of Ex.A9. In all other aspects, the findings by both the authorities below are concurrent and the same.

8.Heard Mr.Parthasarathy, the learned Senior Counsel for the tenant and the learned counsel for the landlord. I have also gone through the documents filed and the judgments referred to by them in support of their submissions.

9.The learned Senior counsel for the tenant submitted that the appellate authority committed an illegality in relying on Ex.A9 for arriving at the cost of the land at Rs.22,00,000/- as the parties to Ex.A9 were not examined before the court below. Therefore the learned Senior Counsel submitted that the value of the land should be calculated at Rs.10 lakhs only as submitted by the tenant. The learned Senior Counsel relied on the following decisions in support of his contentions:

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1)1996-2-L.W.637(Rahmath Fathima, T.H.S. v. T.K.Kader Mohideen)
2)1996-2-L.W. 658(K.Ramanathan (died) and others v. B.K.Nalini Jayanthi)

10.Per contra, the learned counsel for the landlord submitted that the parties need not be examined to prove the transaction and a certified copy of the sale deed could not accepted by computing the market value and he relied on the decision of this court reported in 2001(3)M.L.J. 396 (Susainathan v. Vijayan) and the decision of the Supreme court in 2001(2) CTC 424 (Land Acquisition Officer and Mandal Revenue Officer v. V.Narasaiah).

11.I have considered the rival submissions carefully with regard to facts and citations.

12.Insofar as the contention of the learned Senior Counsel for the tenant that the the reliance placed by the appellate authority on Ex.A9 is wrong is concerned, I find force in his submissions.

13.In 1996(2) L.W.637(cited supra), a learned Single Judge of this court held that a mere marking of a document with consent will not amount to proof of its contents and the sale deed executed between private parties will not be a public document under Sec.74 of the Indian Evidence Act. Unless the parties to the documents appear before the court and prove the contents of the documents, namely sale deed, the same will not amount to proof of its contents.

14.This decision was approved by a Division Bench of this court reported in 1996-2-L.W.658 (cited supra). The Division Bench in the above decision held that persons connected with the sale transactions or attesting witnesses should be examined in order to prove the transactions as well as the factors referred to therein. The relevant portion reads as under:

> "30.To determine the fair rent under Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, evidence in each case is absolutely necessary. It will not be possible for any Court to have an idea about the relevant factors, viz., location of the site, proximity, nearness to the developed areas, frontage, situation, etc., etc., in any case, merely on the basis of sale deeds pertaining to some lands in the locality. Even the particulars contained in a given case are sufficient to prove the nature and character of the lands, dealt with therein, there must be evidence before the court to the effect that the lands are similar in nature and the character of the lands dealt with in such sale deeds, and those documents could be taken into consideration for fixing the fair rent for any residential or non-residential building. If a

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party rests content with producing some sale deeds and if there is no material before Court, the sale deeds cannot be taken into account by the court for determining the market value. Therefore, as held by the Supreme court in 1993(3) S.C.C. 240 and 1991(4) S.C.C., 195 referred to supra, persons connected with the sale transactions or the attesting witnesses should be examined in order to prove the transactions as well as the factors referred to therein. The burden of proof is always on the landlord to prove in each case the market value or the site in which the building is constructed, the cost of construction of the building and the cost of provision of any one or more of the amenities specified in Schedule I as on the date of application for fixation of fair rent. Under Section 64 of the Evidence Act, documents must be proved by primary evidence except in cases mentioned in Section 65 of the Evidence Act."

"31.Section 51-A of the land Acquisition Act has been introduced in the Land Acquisition Act. By virtue of the said section, the provisions of Section 65(f) of the Evidence Act become operative and registration copies of sale deeds or other documents may be accepted as evidence of the transaction recorded in the document in the proceedings under the Land Acquisition Act. Sec.51-A of the Land Acquisition Act does not dispense with proof of the relevant factors which are absolutely necessary to enable the court to determine the market value of the land. Therefore, oral evidence is necessary to speak about the transactions proved by the sale deeds. We have already extracted the observations made by the Supreme Court in 1993(3) S.C.C. 240, wherein the Supreme Court has expressly referred to the provisions of Section 51-A of the Land Acquisition Act. Our above view is also fortified by many rulings referred to in the earlier part of this judgment."

"32.For the foregoing discussions, we hold that the view expressed by S.S.Subramani, J., in C.R.P.Nos.4673 and 4674 of 1987 dated 7.10.1994 since reported in 1996-2-L.W.631 is correct. We are of the view that the learned Judge has rightly set aside the orders of the authorities below in that case and remitted the matter to Rent Controller to decide the case afresh since the finding was not based on legal evidence."

15.In 2001(2)CTC 424 (cited supra), the Supreme court held that certified copy of the sale deed could be considered without examining persons connected with the transactions mentioned in the sale deed in view

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of Sec.51-A of the Land Acquisition Act.

16.Following the above said Supreme Court judgment, a learned Single Judge of this court in the decision reported in 2001(3)M.L.J.396(cited supra) held that while fixing the fair rent under Sec.4 of the Act, certified copies of sale deed could be considered for computing market value of the property without examining anybody concerned with the transactions for proving the market value.

17.As rightly pointed out by the learned Senior Counsel for the tenant the decision of the Hon'ble Supreme Court reported in 2001(2)CTC 424(cited supra) was delivered by taking into consideration Sec.51A of Land Acquisition Act and there is no such provision in the Tamil Nadu (Buildings Lease and Rent Control) Act, 1960. Therefore I am inclined to prefer the decision of the Division Bench of this court reported in 1996-2-L.W.658(cited supra) to the decision of the learned Single Judge reported in 2001(3)M.L.J.396(cited supra) which was passed without considering the decision rendered by the Division Bench of this court. Therefore I am of the opinion that unless the parties to the sale deed are examined before the court the sale deed will not prove its contents even though it is marked by consent of both the parties.

18.Admittedly in the present case, Ex.A9 sale deed was marked through P.W.3, who is the son of the landlord. None of the parties to the sale deed, i.e., Ex.A9, was examined to prove its content. In such circumstances, the appellate authority ought not to have relied on Ex.A9 to arrive at the cost of the land at R.22,00,000/-.

19.The rent controller on the other hand relied on Ex.C1, the Government Guideline value for arriving at the cost of the land at Rs.22,89,600/- per ground. The Government guideline value cannot form basis for determination of market value as the guideline value is fixed for determination of amounts payable by way of stamp duty. Therefore the rent controller has also erred in relying on Ex.CI for arriving at the cost of the land at Rs.22,89,600/- per ground. A Full Bench of this court in the decision reported in 2006(2)CTC 433 (Sakthi & Co. vs. Shree Desigachary) narrated the methods of valuation of ascertaining the market value and the relevant portion reads as under:

> "14.The methods of valuation for ascertaining the market value, as suggested in the above decisions, are as follows:
>
> (1)Opinion of experts
>
> (2)The price paid within a reasonable time in bona fide transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages. Evidence of bona fide sales between willing prudent vendor and prudent vendee of the lands acquired or situated near about that land

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possessing same or similar advantageous features would furnish basis to determine market value.

(3)A number of years purchase of the actual or immediately prospective profits of the lands acquired.

15.It is a settled law, as laid down in the judgments referred to above, that in determining the market value, the Court has to take into account either one or the other three methods to determine market value of the lands appropriate on the facts of a given case. According to the Supreme Court, generally, the second method of valuation is accepted, as the best. This method would furnish the evidence of bona fide sales between willing prudent vendor and prudent vendee of the lands acquired or situated near about that land possessing same or similar advantageous features, which would enable the court to determine the market value correctly.

16.In view of the above ratio decidendi fixed by the Supreme court, the fixation of market value on the basis of guideline value or valuation register, summoned from Sub-Registrar's Office and the Engineer, is illegal and unsustainable.

17.The view expressed by Justice S.S.Subramani, in our view, is correct, as it is in consonance with the principles laid down by the Supreme Court. The other view expressed by Justice Srinivasan is not correct, as the methods suggested by the Supreme Court for fixing the market value would not include the consideration of guideline value and valuation register. So, in our opinion, the said view is wrong.

18.Therefore, our conclusions are as follows:
(1)The guideline value, contained in the Basic Valuation Register, maintained by the Revenue Department or the Municipality for the purpose of collecting stamp duty, has no statutory base or force. It cannot form a foundation to determine the market value mentioned thereunder in instrument brought for registration.

(2)Evidence of bona fide sales between willing prudent vendor and prudent vendee of the lands acquired or situated near about that land possessing same or similar advantageous features would furnish basis to determine the market value. In this case, the

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guideline value alone has been considered, which, in our view, is illegal.

(3)The Rent Controller and the Rent Control appellate Authority, in the present case, are not right in relying upon the guideline value, maintained by the Revenue Department, for arriving at a fair rent, to be fixed under Section 4 of the Tamil nadu Buildings (Lease & Rent Control) Act, 1960.

19.In view of the above settled position of law and conclusions, both the counsel for the parties would now agree for setting aside the orders impugned and for remanding the matter for fixing the fair rent in respect of the property during the relevant point of time to follow the methods as mentioned above, after allowing the parties to adduce evidence.

20.Therefore, it would be appropriate to remand the matter to the Rent Controller, after setting aside the orders impugned, and to allow the parties to adduce evidence, to help the Rent Controller in arriving at the market value, on the basis of the evidence of bona fide sales between the vendor and the vendee of the lands situated near about that land possessing same or similar advantageous features during the relevant point of time which is, accordingly, ordered."

20.Further in this case it is seen that the tenant who has sub-let the property filed RCOP No.2053/2003 against the sub-tenant for fixation of fair rent at Rs.73,128/-, claimed in that RCOP that the value of the very same site (which according to him is Rs.10,00,000/- per ground, in the case on hand) is not less than Rs.1,20,00,000/- as on 30.10.2003. The landlord has filed C.M.P.No.8594/2006 in C.R.P.NPD.No.974/2003 praying to receive the certified copy of RCOP No.2053/2003 as additional evidence in CRP.NPD.No.974/2003.

21.To render substantial justice, court can always take note of the subsequent developments and accordingly C.M.P.No.8594/2006 is allowed and the certified copy of the petition in RCOP No.2053/2003 was taken on file. A mere perusal of this petition would prove that the tenant in this case as landlord filed a petition under Sec.4 of the Act 18 of 1960 against his sub-tenant for fixing the fair rent at Rs.73,128/-. It was also clearly stated in that petition that the petition property is located in a very important, precious, valuable and well-known area and in the heart and soul of the city of Chennai and not even an inch of the same is available anywhere in the locality. Thereafter it was claimed in the petition that the market value of the property is not less than Rs.1,20,00,000/- per ground.

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22.The averments made by the tenant in RCOP No.2053/2003 is also to be considered on remand by the appellate authority along with other evidence. The parties may also be permitted to adduce additional evidence if any, by the appellate authority for arriving at the cost of the land on the basis of the market value which is to be ascertained as per the abovesaid decision of the Full Bench of this Court reported in 2006(2)CTC 433 and the decision of the Division Bench reported in 1996(2) L.W.658. The appellate authority is hereby directed to decide the question of the cost of the land alone in the above said terms and accordingly fix the fair rent of the property. The appellate authority shall try to dispose of the matter within 2 months from the date of receipt of this order considering the fact that RCOP was filed in the year 1994.

23.In the result, the Civil Revision Petitions are disposed of with the above directions. No costs. C.M.P.No.9288/2003 is closed.

sks

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,

1. The VII Judge, Court of Small Causes,
   Madras.

2. The XVI Judge, Court of Small Causes,
   Madras.

3. The Registrar, Court of Small Causes,
   Madras.

+1 cc to Mr.A.Ramesh Kumar, Advocate Sr.No.32160.

+1 cc to Mr.A.Thiyagarajan, Advocate Sr.No.32371.

BV(CO)
dcp/13.7.07 C.R.Ps.(NPD)885,974 & 975/03.

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